THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 10215 of 2005

01-02-2006

Between:

M.Anjaiah S/o.Mallaiah
R/o.H.No.9-1-364/A/76/A,Sangam Langer House, Hyderabad.

..... PETITIONER

AND

1 The Govt. of A.P, Rep.by its Prl. Secretary to Govt., Revenue (Assignment-

III) Department, Secretariat Buildings Hyderabad and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 10215 of 2005

O R D E R:

This writ petition has been filed by M.Anjaiah with a prayer to issue a writ, Order or direction more particularly one in the nature of Mandamus declaring the action of the respondents in not providing alternative land as requested by him in his application dated 19-07-2002, as illegal and arbitrary. He also challenges the validity of the Memo No.C1/669/96, dated 25-

01-2003 issued by the 5th respondent-Special Deputy Collector, Land Acquisition (General), Hyderabad, whereunder his request for providing alternative land in lieu of the compensation for the acquired land has been rejected.

The petitioner is the owner of the premises bearing No.13-6-790, consisting of residential house admeasuring 400 sq.yds and saw mill admeasuring 514 sq.yards situated at Sangam, Langer House, Gudimalkapur, Golkonda Mandal, Hyderabad. The Government issued a notification under Section 4(1) of Land Acquisition Act (for short 'the Act') published in A.P. Gazette, Hyderabad-36, dated 14-11-1996, proposing to acquire the land admeasuring 6766 square meters of land including the land and building of the petitioner. Subsequently, a declaration under Section 6 of the Act came to be published in A.P. Gazette, Hyderabad-44, dated 09-12-1997. The writ petitioner questioned the notification under Section 4(1) of the Act by filing W.P.No.751 of 1998. The grievance of the petitioner is that the application filed by him on 19-7-2002 for grant of alternative land in lieu of compensation for the acquired land has not been considered. The said writ petition came to be disposed of on 02-12-2002.

I deem it appropriate to refer the relevant portion of the order passed in W.P.No.751 of 1998 and it is thus:

> " It is represented that on passing the award, the petitioner made a representation dated 19-7-2002 that if the authorities allot him a suitable land equivalent to his acquired land, he is ready to give possession of above said land in exchange. The said offer made by the petitioner was favourably considered and the Revenue Divisional Officer Hyderabad Division through his letter No.G/13069/98 dated7-8-2002 addressed to the Collector, Hyderabad District submitted proposals to allot alternative site to the applicant out of the vacant Government land of Ac.20.10 guntas of Ibrahimbagh village of Golconda Mandal.
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> In view of the same, when once the authorities have

agreed to allot alternative site, this court is not inclined to go into the validity or otherwise of the impugned notification issued. However, if the authorities fail honour the commitment, namely, allotting alternative site equivalent to the land acquired by the respondent, it is open for the petitioner to a question the same before the appropriate forum. This Court hopes that the District Collector will consider the case of the petitioner as recommended by the Revenue Divisional Officer, Hyderabad Division, dt. 7-8-2002, quietus to the litigation, within two months from the date of receipt of a copy of the order.

The writ petition is accordingly, disposed of. No costs."

Subsequently, the proposal made by the 4th respondent-Revenue Divisional Officer culminated into issuance of memo dated 25-09-2003 by the 5th respondent-Special Deputy Collector, Land Acquisition (General), Hyderabbad. Under the said memo, the request of the petitioner for providing alternative site instead of compensation to the acquired land came to be rejected. The said memo is under challenge in this writ petition.

Counter affidavit has been filed by the 5th respondent.

It is stated in the counter affidavit that the proposals moved by the 4th respondent with regard to allotment of alternative site to the petitioner for the acquired land came to be negatived and accordingly the memo impugned in this writ petition is issued. Paragraphs 6 and 7 of the counter affidavit need to be noted and they are thus:

"6. In reply to para Nos. 6,7,8 & 9 of petitioners affidavit it is submitted that this Hon'ble Court disposed off the WP No.751/98 on 2-12-02, thereafter steps have been taken for taking over possession of land held by petitioner herein and accordingly the possession of the Notified land covered by W.P.No.751/98 was taken over and handed over to Requisitioning Department on 3/2/03 for

development of Babughat memorial at Langer Houz. The rest of the averments in these paras are denied for want of knowledge.

7 . In reply to para No.10 of petitioner affidavit it is submitted that the Collector, Hyderabad through Lr.No.C3/3208/94 dated 18-1-03 informed that there is no question of allotment of alternate land in lieu of land acquired belonging to the writ petitioner herein and negative the proposals sent by Revenue Divisional Officer Hyderabad through Lr No.G/13069/98 dt. 7/8/02. Having regard to said instructions of the Collector, Hyderabad, Memo No.C1/669/96 dt. 25-1-2003 was issued to the writ petitioner by respondent NO.5 herein. As a matter of fact there is; no provision in the Land Acquisition Act to allot alternate land in lieu of land already acquired. The compensation amount of acquired Land was determined and the petitioner herein is at liberty to receive the compensation amount. Instead of doing so the petitioner herein is stretching a statutory matter of Land Acquisition Act beyond unacceptable limits, attributing motives as illegal, bad and without any Jurisdiction of law, which are not tenable. Therefore the W.P. is liable to be dismissed."

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition appearing for the respondents.

The counsel for the writ petitioner submitted that the respondents made the petitioner to with draw the earlier writ petition (W.P.No.751 of 1998) on the assurance of providing alternative site for the acquired land. He further submitted that some of the land losers have been provided alternative site for the acquired land and therefore, there is no justification for the respondents in rejecting the proposals made by the 4th respondent-Revenue Divisional Officer for providing alternative site to the petitioner in lieu of the compensation for the acquired land. He refers to G.O.Ms.No.678 dated 17-10-2001 whereunder alternative site came to be allotted in favour of one Lt.Col.D.N.Sharma and Dr.Vikram Sharma in lieu of

their plot no.13-6-785/A/10 and 11 at Sangam, Langer House acquired by the Government for the development of Bapughat.

The earlier writ petition filed by the petitioner came to be disposed of considering the proposal made by the 4th respondent-Revenue Divisional Officer for allotment of alternative site in lieu of compensation to the acquired land. But the proposals moved by the 4th respondent-Revenue Divisional Officer came to be negatived. By the time of the orders passed by this Court in W.P.No.751 of 1998, an award had already been passed fixing the compensation payable to the petitioner. Section 23 of the Act deals with the matters to be considered in determining compensation.

For better appreciation, Section 23 of the Act needs to be extracted and it is thus:

> "23 (1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration-
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> **First,** the market value of the land at the date of the publication of the [notification under Section 4, Sub-section(1)];
>
> 1-A In addition to the market value of the land, as above provided, the court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, Sub-section (1); in respect of such land, to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.
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> **Explanation:** in computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded].
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> 2. In addition to the market value of the land, as above provided, the court shall in every case award a

sum of (thirty per centum) on such market value, in consideration of the compulsory nature of the acquisition."

A plain reading of the above referred Section indicates that providing alternative site to the land acquired is not within the scope of the provisions of the Act. When the compensation has been fixed in accordance with the provisions of the Act, no *Mandamus* can be issued to the respondents to provide alternative site in lieu of compensation for the acquired land.

The writ petition is devoid of merits and the same is accordingly dismissed. No costs.

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01-02-2005

Mjl/*